IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8022 OF 2004

Ms.Saeeda Mohammad Anwar Petitioner

versus

State of Maharashtra & others Respondents

M.S.Karnik, adv. for petitioner.
A.R.Shaikh, adv. for respondent no.4.
P.I.Khemani, adv. for respondents 1 and 3.
R.V.More, adv. for respondent no.2.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 11th October 2004

PC :

1. This petition under Article 226 of Constitution of India is directed against an order dated 30th August 2004 passed by respondent no.3. By this order respondent no.3 has decided issue of seniority between petitioner and respondent no.4.

2. Mr.Karnik, learned advocate appearing for petitioner submits that the impugned order deserves to be quashed and set aside on the short ground that it is issued without following

principles of natural justice. In his submission, when respondent no.3 was considering issue of seniority, he was obliged to give notice to petitioner and hear her objections to the claim made by respondent no.4. Admittedly, no such notice was issued nor hearing given. Therefore, the order deserves to be quashed and set aside. He further submits that in any event the claim made by respondent no.4 could not have been granted.

3. Learned counsel appearing for respondent no.4 on the other hand submits that the claim of respondent no.4 has been rightly granted as he is senior to petitioner in services. The claim has been considered on the basis of materials produced before respondent no.3 and such an order does not call for any interference by this Court under Article 226 of Constitution of India.

4. It is pertinent to note that a writ petition was filed in this Court by respondent no.4 herein. That writ petition being Writ Petition No.1014 of 2004 was filed against Commissioner - Nashik Municipal Corporation, Education Officer - Zilla Parishad Nashik and petitioner in this petition. Petitioner in this petition was arrayed as respondent no.3. Despite notice being

issued to respondent no.3 i.e. present petitioner, in that petition, she did not remain present. This Court has issued a direction to the Deputy Director of Education to decide the case of respondent no.4 herein pertaining to condonation of break in service within a period of eight weeks from the date of order and thereafter grant deemed date of seniority to him. It is in pursuance of this direction that respondent no.3 has passed the order impugned in this petition.

5. This Court issued the aforesaid direction after it was brought to it's notice that respondent no.4 herein has been praying for condonation of nine months' break in services. The period in question was 26th June 1980 to 25th March 1981. It was his case that this break was in fact condoned way back in 19th August 1997 but no effect was given to this order and consequently the issue of seniority could not be decided. This Court after considering all these materials issued the aforesaid directions. The direction was issued by a Division Bench to which one of us (A.P.Shah, J.) is a party. If present petitioner had any grievance, she should have appeared in response to the notice issued in earlier petition. Once this Court has issued a

direction to respondent no.3 herein to decide the issue of seniority after granting necessary condonation of breaks in service, it is not open for the petitioner to make any grievance. It is not open now for her to urge that she is prejudiced in any manner because no hearing was given to her by respondent no.3. Therefore, we do not find any merit in the first contention of Mr.Karnik about breach of principles of natural justice.

6. Equally, untenable is the second contention about applicability of GR dated 10th May 1989. In our view, it is not open for the petitioner to urge that this GR is only restricted to the issue of pension and cannot be made basis for deciding seniority. In our view, this argument is not open for the petitioner because ultimately it is on the basis of the condonation of breaks as well as consequential seniority in services, that other benefits would be admissible. The direction issued by this Court is not on the basis of this GR alone. Therefore, at the instance of petitioner who has been a party to the earlier writ petition, we do not wish to go into the issue of ambit and scope of this Government Resolution.

7. That apart, after perusing the impugned order as well as affidavit-in-reply filed on behalf of respondent no.4 we are satisfied that in the facts and circumstances of present case respondent no.3 has really given effect to the order passed by this Court as well as directions earlier issued in respect of respondent no.4 by Municipal Corporation.

8. We find substance in the contentions of respondents. As a result of the above discussion, it is clear that this is not a fit case for any interference under Article 226 of Constitution of India. Petition is, therefore, dismissed.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)